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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA, Plaintiff, vs. JEREMY GILLERMO UVALLE, Defendant.	)	NO: 1:16-CR-02024-SAB-1 PLAINTIFF'S RESPONSE TO DEFENDANT'S OBJECTION AND GOVERNMENT'S SENTENCING MEMORANDUM

Plaintiff, United States of America, by and through Michael C. Ormsby, United States Attorney for the Eastern District of Washington, and THOMAS J. HANLON, Assistant United States Attorney, submits the following response to the Defendant's Objections to the Presentence Investigation Report (ECF # 57) and sentencing memorandum:

I.

SENTENCING CALCULATIONS

The United States agrees with United States Probation that the Total Offense Level is 13; Criminal History Category III; applicable advisory Guideline Range of 18-24 months.

III.

GOVERNMENT'S OBJECTION TO PSIR

The Government has no objections to the PSIR.

IV.

RESPONSE TO DEFENDANT'S OBJECTIONS TO PSIR

The Defendant filed five to the PSIR.

1) Defendant Objections #1:
Paragraph 12, Page 4:

The argues that he is not currently a gang member, he chooses Sureno gang over Norteno gang, and does use a nickname.

Here, the Defendant does not argue that he is not a documented gang member. The revised PSIR notes that at the time of his arrest, he was known to law enforcement to be a documented Sureno gang member. PSIR at Para 12. The report documents that the Defendant bears the tattoos of a Sureno gang member. PSIR at Para 165. Furthermore, as recently as April 17, 2014, the Defendant advised that he was an "active" gang member and followed the Sureno rules. PSIR at Para 165. Lastly, in the instant case, the Defendant was associating with another documented Sureno gang member. Here, law enforcement officers found a firearm inside of a vehicle. The Defendant's latent prints were discovered on the firearm. Inside of the vehicle, law enforcement officers contacted Joshua James Collett ("Collett.")[1] Collett was also known to law enforcement to be a documented Sureno gang member.

Objection #2:
Paragraph 16, Page 5:
Paragraph 19, Page 5 (revised PSIR):

The objection is moot as US Probation corrected this issue in the revised PSIR.

Objection #3:
Paragraph 139, Page 15:
Paragraph 142, Page 16 (revised PSIR):

The Defendant objects to allegations pertaining to a matter that was ultimately dismissed by state prosecutors. The information has no bearing on the advisory guideline range.

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[1] Collett pled guilty to being a felon in possession of a firearm. 1:16-CR-02018-SAB. Collett was subsequently sentenced to a term of 40 months imprisonment.

Objection #4
Paragraph 156, Page 17:
Paragraph 159, Page 18 (revised PSIR):

The United States has no objection to the Defendant's clarification.

Objection #5
Paragraph 8, Pages 26 and 28:
Paragraph 8, Page 29 (revised PSIR):

The Defendant objects to the following standard condition suggested by US Probation:

> You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.

Here, a three year term of supervised release will assist the Defendant's transition to the community by both deterring him from committing new crimes and by protecting the public. In regards to this specific condition, it has long been recognized that those convicted of criminal conduct "properly are subject to limitations from which ordinary citizens are free." *United States v. Consuelo-Gonzales*, 521 F.2d 259, 265 (9th Cir. 1975). A district court retains its broad discretion in setting conditions of supervised release and probation, even where fundamental rights are involved. *United States v. Bolinger*, 940 F.2d 478, 480 (9th Cir. 1991)(conditions of probation may seek to prevent reversion into criminal activity, even though they activities restricted by conditions may be legal).

In the instant case, the Defendant was associating with a documented gang member who was engaged in criminal activity. The condition as proposed by US Probation will not only increase the likelihood of a successful completion of supervised release, but it will also protect the public.

V.

SENTENCING FACTORS UNDER 18 U.S.C. §3553(a)

In determining the appropriate sentence, this Court should consider the factors as set forth in 18 U.S.C. § 3553(a).

1. The nature and circumstances of the offense and the history and characteristics of Defendant.

The circumstances of the offense are as detailed in the plea agreement and PSIR. The Defendant has a long juvenile criminal history. As an adult, the Defendant has been convicted of (1) Possession of Marijuana; (2) Public Noise Disturbance; (3) Theft; (4) Domestic Violence Assault; (5) Obstruction of a Police officer; (6) Reckless Driving (pled down from Driving Under the Influence); (7) False Statements; (8) Grand Larceny; and multiple vehicular related offenses. The Defendant is a documented gang member who was associating with Collett who was also a documented gang member. Both the Defendant and Collett possessed firearms. Inside of the vehicle, law enforcement officers also discovered methamphetamine, heroin, digital scales, and drug paraphernalia. The firearm in question had recently been stolen during a robbery of Grumpy's Surplus Store in Yakima, Washington.

2. The need for the sentence imposed to reflect the seriousness of the offense, promote respect for the law, and to provide just punishment.

The Defendant pled guilty to a serious offense. The Defendant has been involved with the criminal justice system for much of his life. As such, it does not appear that the Defendant has respect for the law. Here, the government submits that a sentence of 18 months imprisonment is necessary to reflect the seriousness of the offense, promote respect for the law, and to provide just punishment.

3. The need for the sentence imposed to afford adequate deterrence to criminal conduct.

Prior term of confinement have failed to deter the Defendant from engaging in criminal conduct. On November 29, 2011, the Defendant was sentenced to suspended term of imprisonment. In less than two months, a bench warrant was issued. The Defendant was later sentenced due to the probation violation. The Defendant was released from parole on November 14, 2014. Less than two years later, the Defendant was found in Yakima with a stolen firearm that was loaded with ammunition. The government submits that a sentence of 18 months is necessary to afford adequate deterrence.

4. The need for the sentence imposed to protect the public from further crimes of Defendant.

The Defendant is a documented gang member and was found in possession of a loaded firearm. As such, the government submits that the Defendant poses a danger to the community.

5. The need for the sentence imposed to provide Defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

The Defendant earned a GED through the Chehalis School District. The Defendant appears to be in need of vocational training and substance abuse treatment.

VIII.

GOVERNMENT'S SENTENCING RECOMMENDATION

The government recommends a sentence of eighteen months imprisonment, followed by three years of supervised release.

Respectfully submitted this 5th day of April 2017.

JOSEPH H. HARRINGTON
Acting United States Attorney

s/Thomas J. Hanlon
THOMAS J. HANLON
Assistant United States Attorney

I hereby certify that on April 5, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following: Robin C. Emmans

s/Thomas J. Hanlon
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